

USAWC STRATEGY RESEARCH PROJECT

**PREEMPTION AND NUCLEAR NONPROLIFERATION:
CONFLICTING MEANS TO AN END**

by

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ABSTRACT

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The aim of this paper is to argue that the policies of preemption and nuclear nonproliferation are conflicting and that the friction caused by these policies hinders the attainment of the stated national security objective of preventing enemies from threatening the United States and its allies with weapons of mass destruction (WMD). The scope of this paper is limited to the policies of preemption and nuclear nonproliferation. It does not attempt to answer whether the invasion of Iraq was justified or not, has made the United States more or less secure, and does not discuss non-nuclear WMD, counterproliferation or consequence management.

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PREEMPTION AND NUCLEAR NONPROLIFERATION: CONFLICTING MEANS TO AN END

Much of the discussion about American foreign policy over the past few years, in the recent presidential election campaign, and amongst the American populace in general has centered on the debate as to whether or not the United States should have preemptively invaded Iraq. Regardless of political persuasion, or one's perception of the success or failure of the current operations there, the question persists. It strikes directly at the heart of the issue of whether the policy of preemption has supported or detracted from one of the highest priority national security objectives of the United States: "to prevent our enemies from threatening us, our allies, and our friends, with weapons of mass destruction."¹ There are other policies or concepts intended to support this national security objective, such as the three pillars of the December 2002 *National Strategy to Combat Weapons of Mass Destruction*: counterproliferation, nonproliferation, and consequence management.² The currency and relevance of this discussion is evident in the ongoing national debate about how to deal effectively with the growing nuclear threat from Iran and North Korea. Moreover, the 30 September 2004 presidential debate between President Bush and Senator Kerry highlighted proliferation of weapons of mass destruction (WMD) as the gravest threat to the United States' national security. Both emphasized the issue throughout the debate.

The aim of this paper is to argue that the policy of nonproliferation and the newly elevated and explicitly articulated policy of preemption represent, in fact, conflicting objectives and that the friction caused by this policy mismatch hinders the strategic attainment of the stated national security objective of preventing enemies from threatening the United States and its allies with WMD. In so doing, it will distinguish between hostile nation-states and non-states actors (e.g. terrorist organizations and drug cartels), because, while both are identified as enemies or threats, the policies of preemption and nonproliferation ostensibly aim at nation-states. Specifically, a preemptive attack against any terrorist organization will physically occur on the sovereign territory of some nation-state. The same logic applies to the policy of nonproliferation, which demands strict control and accountability of state-produced or state-controlled nuclear material to prevent it from falling into the hands of terrorists. The scope of this paper, however, will remain limited only to the policies of preemption and nuclear nonproliferation. It will not attempt to answer whether the invasion of Iraq was justifiable or not, or if that act has made the United States more or less secure. Nor will it discuss non-nuclear WMD, counterproliferation or consequence management. While the methodology of this argument largely rests on an assemblage of facts concerning nuclear proliferation, that some

might dispute as circumstantial and not possessing direct linkage to the policy of preemption, the reality, as John Adams suggests, is that “facts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passion, they cannot alter the state of facts and evidence.”³

PREEMPTION, IMMINENCE, AND INTELLIGENCE – CONNECTING THE DOTS

The right of “preemption, defined as the anticipatory use of force in the face of an imminent attack, has long been accepted as legitimate and appropriate under international law.”⁴ Why then has this proven so controversial for Americans, becoming the centerpiece of the foreign policy debates in the United States? And, if it has become a commonly accepted principle, many question why the United States found it necessary to reiterate explicitly this option in the current United States National Security Strategy by stating “we will not hesitate to act alone, if necessary, to exercise our right to self-defense by acting preemptively.”⁵ First, the renewed emphasis by the United States on the concept of preemption came largely in response to the perceived new threat that dramatically appeared with the terrorist attacks of 11 September 2001. As President Bush stated prior to February 2005 visit to Europe, “September the 11th caused us to change our foreign policy.”⁶ Secondly, theorists have generally accepted right to preemption as applying only in situations of imminent self-defense. However, in the case of Iraq, imminence, based on intelligence reports, has proven difficult to justify. As the September 2002 “National Security Strategy of the United States of America” states, the warnings of armies forming along borders no longer obtain, and “We must adapt the concept of imminent threat to the capabilities and objectives of today’s adversaries.”⁷ With the benefit of hindsight, there is much discussion of whether this expansion of the definition of imminence will be viewed in the future as a legitimate reason for a preemptive attack. As the absence of weapons of mass destruction in Iraq highlighted, the determination of this new definition of imminence, based on conflicting and potentially faulty intelligence, is difficult to verify. Notwithstanding the Monday morning quarterbacking that has transpired since there were no WMD found in Iraq, the degree of imminence is proving equally difficult to ascertain in Iran and North Korea. Iran claims they do not have, and are not developing, nuclear weapons. The head of the International Atomic Energy Agency (IAEA), Mohamed El Baradei, supports this stating in February 2005 that there “have been no discoveries in the last six months to substantiate claims that Iran is secretly working toward building a bomb.”⁸ The United States’ intelligence sources, however, claim that Iran is using its nuclear power program as a shield to produce weapons.⁹ The assessment of North Korea’s nuclear program is also uncertain. On 10 February 2005,

North Korea announced for the first time that it had nuclear weapons and would not return to the six nation talks.¹⁰ In response to North Korea's claim, Robert Zoellick, nominated to be the United States' next deputy secretary of state, stated on 15 February 2005, that North Korea's announcement might have been a bluff,¹¹ suggesting that they actually may not possess any nuclear weapons. This suggestion further clouds the already murky picture provided by various intelligence agencies, each having its own assessment of North Korea's nuclear weapon development program. "Defense Intelligence Agency analysts believe North Korea may already have produced as many as 15 nuclear weapons...the CIA lowballed the estimate at two to three bombs, while the Department of Energy analysis puts it somewhere in between."¹² So, while Iran claims it is not developing nuclear weapons, the United States claims that it is, and when North Korea claims it has developed nuclear weapons, the United States asserts that it may only be bluffing. These contrasting intelligence estimates about both Iran and North Korea, and the intelligence failure in Iraq, will make it extremely difficult to determine and reliably assert the degree of imminence that will be the basis for future preemptive attacks. Proving reliability and sufficient level of imminence is further complicated by the need to protect the sources and methods of the intelligence used obtain the information that is the basis for the determining the imminence of threat. Although many agree that the warnings of armies forming along borders no longer obtain and the concept of imminent threat must be adapted to the capabilities and objectives of today's adversaries, it is clear that reliably determining the degree of imminence to garner the necessary domestic, or even international, support for future preemptive action will be increasingly problematic.

Regardless of whether or not the United States exercises its self-proclaimed right to preemptive attack in the future, it is clear that its preemptive action in Iraq had an effect on the international community. The prospect of the world's only superpower acting preemptively has proven not only distressing to its enemies, but even to many of its allies. Given the context of the attacks of 11 September 2001, the U.S. government interpreted its stated policy of preemption as a notice served to both friends and foes – a notice unheeded by Saddam Hussein that thereby led to his downfall. The interesting question is what message has this sent to both state and non-state actors that either currently possesses or is trying to acquire nuclear weapons. Has the discouraged nuclear proliferation or has it accelerated it? Has this policy served the United States well in the area of nuclear nonproliferation?

DEVELOPING NUCLEAR CAPABILITY – A COST/BENEFIT ANALYSIS

Before answering such questions, one must examine two facts that seem to have influenced some nations' decision to begin the development of nuclear capability. First, nations possessing nuclear weapons have never attacked each other. Nuclear weapons have proven an effective deterrent between nation-states. Nuclear optimists argue that offsetting nuclear weapon capabilities are stabilizing because they make war too costly.¹³ Akin to the democratic-peace theory of international relations, which posits that democracies do not attack each other, there appears to be an unwritten nuclear-peace theory based on the precedent that countries with nuclear weapons have not attacked each other. Second, is the fact that nations with nuclear weapons receive different treatment on the international stage than those which do not possess them. Their importance is greater and their status elevated in the international community. This has been historically true, going back to the establishment of the permanent United Nations Security Council members, which were coincidentally also the first five nations to possess nuclear weapons. In the days of the cold war, nuclear weapons equated to prestige, power, and development.

The 1967 Nuclear Non-Proliferation Treaty...divides its signatories into two categories: nuclear weapons states (NWS) and non-nuclear weapons states (NNWS). Only those states that had developed and tested nuclear weapons before the treaty were included in the NWS category. These are the USA, USSR, Britain, France and China, who are also the permanent members of the UN Security Council, the so-called P-5.¹⁴

Despite the attempts by the P-5 to institutionalize what was termed nuclear apartheid by many non-nuclear states, other nations developed nuclear capability and eventually produced weapons. In subsequent years India, Pakistan, Israel, and South Africa (for a combination of reasons to include national security, power and prestige that nuclear status afforded) all developed nuclear weapons. The power and status that nuclear weapons states demand in the international community only served to entice countries such as Iraq, Libya, Iran and North Korea, which each determined the risk was worth the reward.

They all know that India, Pakistan, and Israel joined the nuclear club without ever accepting the rules laid out in the Nuclear Nonproliferation Treaty. Even after India and Pakistan set off tests in 1998, the sanctions America imposed were relatively modest and short-lived. As soon as America needed Pakistan's help after the September 11, 2001, attacks, the country was transformed from nuclear outlaw to "major non-NATO ally."¹⁵

Iran and North Korea are the most current examples of countries willing to accept the risks of developing nuclear capabilities. They are countries that few would discuss or consult, if they did not have nuclear development programs. With nuclear development programs, however, they

are subject to intense diplomatic negotiations, each being offered a variety of incentives to disband its nuclear capability. They know that these overtures would not be forthcoming, except for their burgeoning nuclear development programs. They also understand that, while nations that acquire nuclear weapons have historically been the recipient of punishment from other countries or the international community, to date, the tools for enforcement have not included military force. There is growing fear that the system for preventing the spread of nuclear arms may be eroding irreversibly, signaling that a quiet, low-scale arms race may be taking shape.¹⁶ "If you don't do anything with a big cheater, what are the middle and future cheaters to think? The list could include Syria, Saudi Arabia or Egypt, Taiwan or Brazil, even Indonesia and Sudan."¹⁷

Based on these facts, it would appear logical for nations to conclude that attack, from the United States or another country with nuclear weapons, is less likely if they possess their own arsenal. One could also deduce, based on the invasion of Iraq, on history, and America's reassertion of a policy of preemption, that nation states are vulnerable to preemptive attack while developing nuclear weapons, but less likely to confront an attack after they possess them. Part of the United States' justification for attacking Iraq was that it was important to do so before Saddam Hussein acquired nuclear weapons (U.S. intelligence believed that he possessed non-nuclear WMD, but was still in the process of developing nuclear weapons). If this is true, then it is logical for nations possessing nuclear weapons to keep them, and countries in the process of developing nuclear weapons to accelerate their efforts. "Our demolition of Hussein was supposed to cow the others into submission. As it happens, the invasion apparently had the opposite effect. North Korea and Iran may have deduced that the greatest danger is not building nuclear weapons."¹⁸ To determine if this is the effect that preemption has had on nuclear proliferation or whether it has conversely bolstered nonproliferation efforts, it necessary to turn to the facts.

NUCLEAR PROLIFERATION OR MODERNIZATION?

There is reportedly enough highly enriched uranium and plutonium in the world to fuel at least 100,000 nuclear warheads. Eight countries currently possess nuclear weapons and two countries (North Korea and Iran) either have newly developed nuclear weapons or are close to having that capacity.¹⁹ "More than 31,000 nuclear weapons are still maintained by the eight known nuclear powers a decrease of if only 3,000 since 1998. Ninety-five percent of these weapons are in the United States and Russia, and more than 16,000 are operationally deployed."²⁰ Moreover, terrorist organizations have been trying for at least the decade to

acquire the knowledge and material to build some form of nuclear weapon. Osama Bin Laden, who has spoken of acquiring nuclear weapons as a religious duty, has been at the forefront of such activities.²¹ There have many treaties, agreements and initiatives which, taken collectively, essentially aim at reducing the amount of nuclear material and number of nuclear weapons nations possess, preventing any other nations from acquiring nuclear weapons, and safeguarding or destroying weapons grade material to prevent it from falling into the wrong hands. To date these efforts have had mixed results.

The United States is arguably the leader and most active proponent of global nuclear nonproliferation. Its national security strategy and strategy to combat weapons of mass destruction make clear an intention to exercise global leadership on the matter. To this end, the United States took the lead in the Proliferation Security Initiative (PSI). Eleven countries agreed to that initiative in September 2003 in an effort to prevent nuclear material from being illegally transported, produced or sold.²² A number of experts have heralded this cooperative effort as effective. Moreover, the United States has pledged to reduce the size of its nuclear arsenal significantly. These cooperative and conciliatory efforts at global nuclear nonproliferation, however, stand in contrast to ongoing efforts by the United States to modernize its current nuclear arsenal, to develop new tactical nuclear weapons and its reluctance to ratify, after already signing, the Comprehensive Test Ban Treaty.

Other countries with nuclear weapons appear to have taken similar steps toward modernizing their nuclear weapons capability. While it may, or may not, be the case that they are following the U.S. lead on nuclear weapon modernization, it is clear the United States cannot, based on its own efforts, legitimately condemn such nuclear modernization plans. For example, Russia is currently producing a new SS-27 *Topol-M*, a road mobile version of the SS-27 with a 7,000-plus mile range, a next generation intercontinental ballistic missile (ICBM) with a payload of 4,400 kilograms with up to ten warheads, and new Borey-class nuclear-powered submarines each of which will carry 12 SLBMs with MIRVs and with a range of more than 8,000 kilometers.²³ In addition, France has a detailed nuclear weapon modernization plan through 2015.²⁴ Not surprisingly, China, India, Pakistan, have all outlined their plans to go forward with nuclear weapon modernization. The end result has been that, while there may be some promise of reduction in numbers of nuclear weapons from all of these countries (mostly of antiquated systems already requiring disposal), there has been a simultaneous commitment to continue modernization and production of newer and more advanced weapons.

While the nuclear weapons modernization plans of all of these countries pose a potential danger, the reaction in Russia is perhaps the most disturbing. Estimated to still have as many

as 35,000 nuclear warheads,²⁵ Russia has, in light of the nuclear weapon modernizations discussed above, all but abandoned its previous commitment to disarmament. Despite early success and years of work under the Nunn-Lugar Treaty, the majority of its Cold War arsenal remains inadequately guarded and questionably accounted for.

For years the Ministry of Atomic Energy has blocked US officials from helping Russia secure parts of its sprawling nuclear arsenal, including some 600 metric tons of bomb-grade fissile material and up to 25,000 warheads...The Ministry of Defense reported installing only about only one-third of the 76 miles of perimeter fencing that the United States began providing in 1997 for warhead storage sites at 52 separate locations. Meanwhile the Department of Energy has finished installing security improvements at only 13 of 133 building sites in the nuclear weapons complex. Overall the United States has been given access to only 35 of 133 nuclear weapons complex buildings.²⁶

This poses the real, if not already realized, danger of nuclear material, technology or weapons being stolen by or sold to state or non-state actors. This danger was made clear during the 16 February 2005 United States' congressional testimony by senior intelligence officials who quoted a National Intelligence Council report that stated that "we assess that undetected smuggling has occurred and we are concerned about the total amount of material that could have been diverted or stolen in the last 13 years."²⁷ The report also noted that Russian authorities could not have recovered "all the [nuclear] material reportedly stolen."²⁸ This material, in the hands of terrorist organizations, represents the most significant threat to the United States' national security.

PREEMPTION'S EFFECT – NUCLEAR DETERRENCE OR INCENTIVE

The most obvious success in countering such a threat was the discovery and break up of the Abdul Qadeer Khan network, followed by Libya's announcement that it was abandoning its nuclear weapons program and allowing verification by international inspectors who can now access its facilities. This action immediately followed the United States' liberation of Iraq and the capture of Saddam Hussein. American policy makers hailed Libya's announcement and actions as the premier example of the policy of preemption furthering the cause of nuclear nonproliferation. While Saddam Hussein's fall certainly influenced Mohammar Qadafi's decision, it appears he was as much, if not more, influenced by the realization that Libya's nuclear development program was compromised by international law enforcement efforts. Given the options, he decided it was in his best interest to announce a unilateral abandonment his nuclear weapons program, rather than confront an international community with irrefutable evidence of his designs and face the consequences. "Caught in the act, Libya was forced to publicly reveal it had worked secretly to build nuclear as well as chemical weapons. Qadafi,

concerned about his legacy and an economy hit hard by sanctions made the startling announcement in December 2003.²⁹ In this way, Qadafi figured he could muster some semblance of international prestige while at the same time negotiating a deal that ended years of sanctions against Libya for its role in the 1988 bombing of a Pan Am jet that killed 270 people in Lockerbie Scotland.³⁰ Even with Qadafi's declaration that he would cooperate with international inspectors, many suspect that he has still not been entirely forthcoming.

While policy of preemption's effect on Libya's supposed nuclear disarmament is arguable, it is difficult to argue that preemption has yet to produce positive results in North Korea and Iran. North Korea shows no indication of slowing or stopping its nuclear weapons program. Most reports agree that it currently has between six and eight nuclear weapons and continues its effort at extending its missile range capability.

North Korea is an economic basket case that desperately sells whatever it has to whoever will pay...it is known as "Missiles R Us," having sold missiles in the last decade to Iran, Libya and Yemen...It is actively constructing a 200-megawatt reactor and a 50-megawatt reactor. On this path, when North Korea is able to produce additional nuclear weapons-useable material, or indeed bombs, nothing will prevent it from becoming "Nukes R Us" for terrorists and other proliferators.³¹

Given the nuclear weapons modernization efforts of other countries with nuclear weapons previously discussed, North Korea argues the international efforts aiming to disarm it are hypocritical. Additionally, North Korea seems to take an odd sense of pride in the prestige and importance that it demands from the U.S. and other nations which are recognized to derive solely from its possession of nuclear weapons. Its status and legitimacy in the world are backed singularly by the symbol of power that its nuclear weapons provide. Lastly, it is important to note that North Korea has been the subject of international punishment using all elements of power with the exception of one – the military. It understands the concept of nuclear-peace theory and is logical in assuming that the best way to prevent a preemptive attack is to stubbornly cling to its nuclear capability.

Iran is in a different situation. Believed to not yet have nuclear weapons, it is alleged to be dangerously close to having its first nuclear weapon. It also announced recently that its missiles can now range Europe.³² In the case of Iran, it appears the policy of preemption as executed against its neighbor Iraq, has accelerated its nuclear proliferation efforts, not deterred them. It could be argued that the preemptive attack on Iraq did not influence Iran's ambitions and would have proceeded with its nuclear development program even if the United States had not invaded Iraq. The relevant question, however, is if the policy of preemption has, in any way, deterred to its nuclear proliferation. While it may still be too early ascertain, the evidence

suggests otherwise. Iran appears to be following the same model as North Korea, the implementation of which seemingly hastened by Saddam Hussein's fate. Iran now receives international attention similar to North Korea. Visited by international diplomats and offered a variety of *quid pro quos*, it has more bargaining power in the international community now than it ever has. Iran also learned that it is most vulnerable to preemptive attack now, while it is developing nuclear weapons. It is also aware that, if history is any indication of the future and the nuclear-peace theory proves true; possessing nuclear weapons minimizes the likelihood of preemptive attack. The policy of preemption with regard to Iran has not deterred nuclear proliferation, but appears to have accelerated its nuclear weapon development.

This development in Iran is especially dangerous given its support for radical Islam and associated terrorist organizations. This is widely considered the most likely nexus of WMD and terrorist organizations. Having stated that, there is no evidence that the policy of preemption has deterred terrorist organizations' efforts to acquire nuclear material, knowledge or weapons. In fact, because they have already attacked the United States, an attack on these organizations would be considered by most in the West as a retaliatory attack and not a preemptive attack. Terrorists understand that they will be attacked if they are located, so the threat of preemption is moot. The effect of this preemptive policy has only been evident on nation-states that possess or are trying to develop nuclear weapons and on those that support terrorist organizations. For those countries with nuclear weapons, the preemptive precedent based on imminent threat set by the United States has already been cited as justification for possible preemptive strike. Shortly after the Beslan massacre, the chief of the general staff of Russia's armed forces declared that Russia will "take all measure to liquidate terrorist bases in any region of the world."³³ This shift in policy was echoed by Russia's Defense Minister, Sergei Ivanov, who "also defended Russia's right to carry out preemptive strikes outside Russia."³⁴ The situation between India and Pakistan, two countries with nuclear weapons, is now more dangerous with this preemptive precedent. Using the same logic that United States expressed in its justification for its policy of preemption, it is plausible that Pakistan or India may determine that a preemptive strike is justified and necessary, at some point in time, to ensure its own national security. As noted above, the policy of preemption has only hardened North Korea's resolve to retain its nuclear capability, and provided justification for its claims of self defense. North Korea's Ambassador to the United Nations, Han Sung Ryol, claimed as much in an interview on 20 February 2005 when he stated, "We have no other option but to have nuclear weapons as long as the Americans are trying to topple our system. If the United States withdraws its hostile policy, we will drop our Anti-Americanism and befriend it. Then why would we need nuclear

weapons?"³⁵ In Iran, the rhetoric has also grown increasingly hostile as Hassani Rohani, the secretary general of Iran's Supreme National Security Council, said on 6 February 2005, that there was nothing the West could do to make it scrap its nuclear programme and that Iran would retaliate in the event of an attack by America or Israel..."and we will definitely accelerate our activities to complete our [nuclear] fuel cycle."³⁶ This statement points toward an accelerated effort to achieve what Saddam Hussein was unable to accomplish. "Apparently, they (the Iranians) have reached the conclusion they need the bomb more than ever to keep the United States out of their business and out of their country."³⁷ These developments, particularly in light of the global nuclear modernization plans, suggest that preemption is working at cross-purposes against the policy of nonproliferation. The most successful recent effort at nonproliferation has been the Proliferation Security Initiative, which has international support and has the committed leadership of the United States. It is this type of commitment and leadership from the United States that is required in all nonproliferation efforts.

CONCLUSION

The facts, as presented in this paper, suggest that the policy of preemption, while not being surrendered as a principle of self-defense, should not be explicitly written into the subsequent United States' National Security Strategy and used as policy doctrine. It is well understood by the rest of the world that the United States has the power and will to exercise that right when it determines that imminent self-defense is necessary. Additionally, having been accepted by most national security professionals as the gravest threat to the United States' national security, real and tangible efforts should be made in the global reduction of nuclear weapons and material, beginning with the ratification of the Comprehensive Test Ban Treaty. These nonproliferation efforts will only be seen as sincere if the United States stops its modernization and development of new nuclear weapons, and declares a unilateral reduction of its nuclear arsenal. This will not weaken its national security. On the contrary, this will provide the United States and the rest of the international community the additional and legitimate leverage to reduce the threat from state actors who possess nuclear weapons, weaken and delegitimize those state actors trying to acquire weapons and reduce the amount of nuclear material available to non-state actors trying to acquire nuclear material to produce WMD. This increased emphasis on nuclear nonproliferation and deterrence will better serve the United States' efforts of achieving its national security objectives. While preemptive action in Iran, North Korea or some other part of the world may well be necessary, this option should be viewed as only as a choice of last resort and not a specified policy for achieving its national

security objectives. These recommendations will reconcile the current friction between the conflicting policies of preemption and nonproliferation and further the United States' realization of its national security objectives.

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